

REMARKS

Claims 1, 5-15, and 18-22 are pending, including independent claims 1, 8, 10, 12, 14, 15, and 20-22. After multiple examinations and the issuance of five Office Actions on the merits, claims 12-14 and 22 had been allowed, and claims 5-7, 18 and 19 had been found to contain allowable subject matter. The present Office Action now imposes a 9-way restriction requirement, defined according to the nine independent claims. Applicant respectfully traverses.

First, the restriction requirement does not promote the efficient prosecution of this application. A primary purpose of a restriction requirement is to avoid the searching and examination of claims to additional, distinct inventions in one application. Here, however, the application has already been substantively examined five times. The fact that a restriction requirement has not previously been imposed is strong evidence that a restriction requirement is not appropriate in this case. Further, because the claims have already been substantively examined multiple times, no efficiency is gained by imposing a restriction requirement now. Also, even if the claims were directed to independent and distinct inventions, where claims can be examined together without undue burden, as here, the Examiner must examine the claims on the merits (MPEP § 803.01).

Second, the Office Action does not provide sufficient reasons for the restriction requirement, as required by MPEP 808.01:

The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate.

The Office Action does not provide the required reasoning. Instead, the restriction requirement merely designates each independent claim as a separate invention, without any explanation or reasoning as to how the subject matter of each would be mutually distinct or independent.

In the Office Action's supposed explanation of the restriction requirement, each of the nine claim groups is said to have "separate utility such as a method/system of forecasting energy usage by tracking internet purchases." This explanation does not support the restriction requirement for at least two reasons. Because each claim group

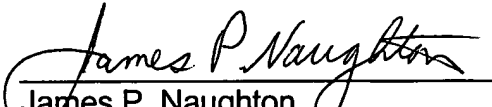
is described in the same way, the Examiner's explanation only corroborates that the claim groups need not and should not be restricted and examined separately. Moreover, the explanation is not accurate. Applicant's invention has nothing to do with "forecasting energy usage."

Therefore, the restriction requirement is traversed and should be withdrawn because (1) the Office Action fails to demonstrate that there is a burden on the searcher, (2) the Office Action fails to establish that the nine claim groups are so patentably distinct as to warrant separate examination, (3) the Office Action is conclusory, inaccurate, and does not provide supporting particularized reasons, and (4) the restriction requirement is fundamentally unfair to Applicant, who has already responded to five substantive Office Actions and filed two requests for continued examination.

On May 15, 2006, Applicant's undersigned attorney called the Examiner to discuss the restriction requirement. No agreement was reached, except the Examiner stated that he would permit Applicant to elect two claim groups, such as groups IV and V containing previously allowed claims, in response to the restriction requirement.

Pending the Examiner's reconsideration of the restriction requirement, and to expedite the prosecution of this application, Applicant provisionally elects group IV (allowed claims 12, 13) and group V (allowed claim 14). In addition, Applicant respectfully requests that the Examiner allow Applicant to also provisionally elect group I (claims 1, 5-7). This would add a third independent claim, and dependent claims 5-7 that previously have been found to contain patentable subject matter.

Respectfully submitted,


James P. Naughton
Registration No. 30,665
Attorney for Applicant

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, ILLINOIS 60610
(312) 321-4200